

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
ALBERTO CURBELO,

Plaintiff,

-against-

VILLAGE OF MONTICELLO, DETECTIVE GERALD
DIETZ, P.O. JOHN DOE # 1-15,

Defendants.
-----X

ANSWER

Docket No. 07 cv 8045

Jury Trial Demanded

Defendant, DETECTIVE GERALD DIETZ, by his attorneys, RENDE, RYAN &
DOWNES, LLP, answering the Complaint of the plaintiff herein upon information and belief:

1. Denies each and every allegation contained in the paragraphs designated “1”, “8”,
“9”, “11”, “12”, “13” and “15” thereof.

2. Denies knowledge or information sufficient to form a belief as to the allegations
contained in the paragraphs designated “2”, “3”, “5”, “10” and “14” thereof.

3. Denies knowledge or information sufficient to form a belief as to the allegations
contained in the paragraph designated “7” except admits that defendant, DETECTIVE GERALD
DIETZ, is a member of the Monticello Police Department.

AS AND FOR A FIRST CAUSE OF ACTION

4. Defendant repeats, reiterates and realleges each and every denial to the allegations
contained in the paragraphs designated “1” through “15” insofar as said allegations are repeated,
reiterated and realleged in paragraph “16” thereof.

5. Denies each and every allegation contained in the paragraphs designated “17” and
“18” thereof.

AS AND FOR A SECOND CAUSE OF ACTION

6. Defendant repeats, reiterates and realleges each and every denial to the allegations contained in the paragraphs designated “1” through “19” insofar as said allegations are repeated, reiterated and realleged in paragraph “20” thereof.

7. Denies each and every allegation contained in the paragraphs designated “21” and “22” thereof.

AS AND FOR A THIRD CAUSE OF ACTION

8. Defendant repeats, reiterates and realleges each and every denial to the allegations contained in the paragraphs designated “1” through “22” insofar as said allegations are repeated, reiterated and realleged in paragraph “23” thereof.

9. Denies each and every allegation contained in the paragraph designated “24” thereof.

AS AND FOR A FOURTH CAUSE OF ACTION

10. Defendant repeats, reiterates and realleges each and every denial to the allegations contained in the paragraphs designated “1” through “24” insofar as said allegations are repeated, reiterated and realleged in paragraph “25” thereof.

11. Denies each and every allegation contained in the paragraphs designated “26” and “27” thereof.

AS AND FOR A FIFTH CAUSE OF ACTION

12. Defendant repeats, reiterates and realleges each and every denial to the allegations contained in the paragraphs designated “1” through “27” insofar as said allegations are repeated, reiterated and realleged in paragraph “28” thereof.

13. Denies each and every allegation contained in the paragraphs designated “29” and “30” thereof.

AS AND FOR A SIXTH CAUSE OF ACTION

14. Defendant repeats, reiterates and realleges each and every denial to the allegations contained in the paragraphs designated “1” through “30” insofar as said allegations are repeated, reiterated and realleged in paragraph “31” thereof.

15. Denies each and every allegation contained in the paragraphs designated “32” and “33” thereof.

AS AND FOR A SEVENTH CAUSE OF ACTION

16. Defendant repeats, reiterates and realleges each and every denial to the allegations contained in the paragraphs designated “1” through “33” insofar as said allegations are repeated, reiterated and realleged in paragraph “34” thereof.

17. Denies each and every allegation contained in the paragraphs designated “35”, “36” and “37” thereof.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

18. Defendants have qualified immunity from prosecution of this action and the lawsuit must be dismissed.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

19. Defendants were at all times acting in good faith and in the performance of their duties in the execution of a search warrant.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

20. That the occurrence complained of was caused in whole or in part by the culpable conduct attributable to the plaintiff including contributory negligence and/or assumption of the risk and that by reason thereof the amount of damages recoverable, if any, shall be diminished in whole or in part by that portion to which the culpable conduct attributable to the plaintiff bears to the alleged conduct of the defendant which allegedly caused the damages.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

21. The equitable share of the liability of the answering defendant, if any, is less than or equal to fifty percent of the total liability of all persons liable, and as such the answering defendant's liability for non-economic loss is limited to his equitable share.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

22. In the event plaintiff recovers a verdict or judgment against the defendant, then such verdict or judgment must be reduced pursuant to CPLR 4545(c) by those amounts which have been or will, with reasonable certainty, replace or indemnify plaintiff, in whole or in part, for any past or future claimed economic loss, from any collateral source.

WHEREFORE, defendant, DETECTIVE GERALD DEITZ, demands judgment against the plaintiff dismissing the Complaint, together with the costs and disbursements of this action.

Dated: White Plains, New York
November 21, 2007

Yours, etc.,

RENDE, RYAN & DOWNES, LLP.

By: /S/
MICHAEL F. GRADY (6197)
Attorney for Defendant
DETECTIVE GERALD DIETZ
202 Mamaroneck Avenue
White Plains, New York 10601
(914) 681-0444

TO: LAW OFFICE OF
ANTOINETTE L. WILLIAMS, P.C.
Attorney for Plaintiff
340 Ardsley Road 1A
Scarsdale, New York 10583
(914) 722-6620

LAW OFFICE OF THOMAS K. MOORE
Attorneys for Defendants
VILLAGE OF MONTICELLO
701 Westchester Avenue
White Plains, New York 10604
(914) 285-8500

CERTIFICATE OF SERVICE

This is to certify that on November 21, 2007, a copy of the foregoing **ANSWER** was served on the following counsel of record via regular mail:

LAW OFFICE OF
ANTOINETTE L. WILLIAMS, P.C.
340 Ardsley Road 1A
Scarsdale, New York 10583

LAW OFFICE OF THOMAS K. MOORE
701 Westchester Avenue
White Plains, New York 10604

/S/
MICHAEL F. GRADY (6197)
RENDE, RYAN & DOWNES, LLP.
Attorneys for Defendants
DETECTIVE GERALD DEITZ
202 Mamaroneck Avenue
White Plains, New York 10601
(914) 681-0444